

CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - JULY 11, 2001

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 5:35 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Chang, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Carr (arrived at 5:38 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

WORKSHOP

1. CIVIC CENTER SITE MASTER PLAN WORKSHOP

Recreation Manager Spier presented the staff report and informed the City Council that in attendance was the design team of Christopher Noll and Merideth Marschak, Noll & Tam Architects and Planners; and Aditya Advani, landscape architect, Royston, Hanamoto Alley & Abey. Also in attendance was KathLeen Keeshen, Library Commission Chairwoman, and Sara Flower, Santa Clara County Library.

Actions: *The City Council **Received** the presentation from Noll and Tam Architects; and **Commented** on Site Plan Options 1 through 4 of the Civic Center Site Master Plan.*

City Council and Redevelopment Agency Action

CLOSED SESSION:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation

Authority: Government Code section 54956.9(b)

One (1) case

2.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation

Authority: Government Code section 54956.9(b)

Two cases

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: Del Priore v. City of Morgan Hill, et al.; U.S.D.C. Northern District No. C-01-20436

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: City of San Jose v. MHUSD, et al.; Case No. 01CS00196, Santa Clara County Superior Court

5.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION; CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8 & 54956.9(c) (1 potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)
Negotiating Parties:	
For City/Agency:	Agency Members; Executive Director; Agency Counsel; and F. Gale Conner, special counsel
For Property Owners:	San Jose Christian College
Closed Session Topic:	Potential Litigation/Real Estate Negotiations

6.

CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR

Legal Authority:	Government Code 54956.8
Real Property Involved:	17.58 acre parcels located on the eastside of Condit Road, bound by Condit Road, Tennant Avenue, Barrett Avenue and Murphy Avenue (APN 817-13-017)
Negotiating Parties:	
For City/Agency:	City Manager/Executive Director; City Attorney/Agency Counsel; Director of Business Assistance & Housing Services
For Property Owners:	Virginia Lomanto Trustee
Closed Session Topic:	Acquisition of Real Property

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the above listed closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:30 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter indicated that the City Council/Agency Commission concluded discussions of Closed Session Items 1-3 and announced that no reportable action was

taken on these closed session items. Closed session items 4 through 6 would be deferred to the conclusion of the remainder of the agenda items.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Fred Domino led the Pledge of Allegiance.

CITY COUNCIL REPORT

Mayor Tem Pro Sellers reported on the activities that he has been involved with the past few months and would continue through the next few months: 1) City School Liaison Committee is working hard to ensure that the City retains the soccer facilities at a new site, noting that the City is in the middle of discussions for land purchase. 2) Participated with South County Housing and the Via Ciolino project lottery for 20 units to be reoccupied. This event underscored the shortage of affordable housing in the community and the needs that remain today. 3) He has been a part of the Morgan Hill Community Foundation, a project initiated by Mayor Kennedy several years ago. He said that in working together, they are close to completing the 501C3 application and creating the Corporation itself. 4) Morgan Hill Community Health Foundation will be very busy through the summer months with the hope that a permanent board will be in place by the end of the summer. 5) Ground breaking of the Highway 101 widening to occur in August thanks to the efforts of Mayor Kennedy and everyone's involvement the past few years.

CITY MANAGER'S REPORT

City Manager Tewes reported that he participated this afternoon on a panel in Sacramento with the Deputy State Treasurer and the head of the local government unit of the Department of Finance. He stated that in the May Revisions, the Department of Finance had reduced revenue estimates. The State is now announcing that they were too conservative. Since the publication of the May revised numbers, State staff has indicated that they are doing better in sales tax, fuel tax, and motor vehicle license fees than anticipated and that tax revenues are coming in at a greater pace. If the State does better than anticipated, there should be less revenue taken away locally and that cities would share resources. He noted that Chief Schwab announced his retirement at the end of the calendar year last week. He stated his appreciation of the advanced notice as it takes a while to fill this important position. He requested community input in terms of the characteristics, background and experience felt important in a police chief. He stated his willingness to address service clubs about these issues.

CITY ATTORNEY'S REPORT

City Attorney Leichter indicated that she did not have a City Attorney's Report to present this evening.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. Jacklin Cortes, 370 Calle Asta, commented on the courthouse, noting that there was no mention of the Court House in the Master Plan to be discussed later this evening by the City Council. She felt that this is something that should be addressed and that the City Council should not accept the Plan without it being accurate. She noted that Board of Supervisor Don Gage stated at a Council Meeting that whether or not the courthouse is built in Morgan Hill is a Council decision. She felt that it was important that the City Council represent the community's best interest. She also felt that things have changed over the past years since the initial agreement with the County for the courthouse. She requested that the Council re look at the agreement with the County when it looks at the City's Master Plan and Downtown Plan in terms of what is best for the community because the community relies on the Council to do so. No further comments were offered.

City Council Action

OTHER BUSINESS:

2. CIVIC CENTER SITE MASTER PLAN ALTERNATIVES *Follow-up Discussion on Workshop Presentation by Noll and Tam Architects*

Mayor Kennedy announced that the City Council conducted a workshop on this item earlier this evening.

Recreation Manager Spier presented the staff report, noting that the Council conducted a work study session on the future site layout of the Civic Center Site Master Plan of four alternatives earlier this evening. Staff requested that the Council direct staff as to which site layout and/or options it would like the architect and landscape architect to move forward with. She said that a decision is needed on the site layout in order to determine the footprint and the location of the 40,000 square foot library so that the City can move forward with its Proposition 14 application.

Council Member Tate strongly supported option 3 with minor amendments (e.g., a more squared building sited a little more to the west and less to the south; pulling new component of city hall more to the southeast in front of the city hall building in order to get more of a view into the area as one passes by on Peak Avenue).

Mayor Kennedy also supported option 3. He stated that he would like to see an elevation looking from Peak Avenue to the west to see what it would look like. He also requested that the landscape architect consider a Sister Cities Friendship Garden, starting with Italy, incorporating the City's relationship with Sister Cities in the overall scheme of landscaping for the civic center site.

Mayor Kennedy opened floor to public comment. No comments were offered.

Mayor Pro Tempore Sellers concurred that option 3 was the best site layout/footprint for a civic center. He clarified that the City is not master planning city hall, noting that there are a lot of questions remaining. He felt that as far as developing a footprint, this would be a good place to start

that provides options in terms of parking and flow. He concurred with Council Member Tate's comments.

Action: *Mayor Pro Tempore Sellers made a motion, seconded by Council Member Tate, to **Direct** staff to proceed with option 3 as the preferred scheme, incorporating Council Member Tate's comments and 2) **Direct** Staff to Complete a Final Layout Site Design for the Library Project.*

Council Member Carr noted that all alternative plans depict a 60,000 square foot library building. He stated that he was amazed that the City is looking at a footprint that is three times larger than the existing library facility. He asked if the size would triple service to residents? Would it triple the collection that the residents would have access to and triple staffing at the library in order to assist the residents?

Recreation Manager Spier clarified that the reason for a 60,000 square foot building is the difference in the Sphere of Influence that the library counts as far as their numbers of population served which includes two-thirds of San Martin while the City looks at its city limit population. This results in a discrepancy as far as square footage number and how it is based. Also, the State now requires a square foot per capita and not the previous half square foot per capita. It is staff's opinion that a 40,000 square foot library building would be adequate for the next 20-years. However, when Proposition 14 first came out, the State wanted to see cities doing smart planning, looking beyond a 20-year horizon. The Library Building Committee believes that it can show the State that the City was not just looking at 40,000 square feet but that it could accommodate a larger facility on this site. As an operator, the County library system prefers a single story building. It is felt that a 40,000 square foot building is the limit that the County can operate with the number of staff at hand. Once you exceed 40,000 square feet, you need to start adding staff and support.

Council Member Carr stated that a 60,000 square foot library assumes a population of 60,000 within the service area of the library which includes Morgan Hill and two-thirds of San Martin and some portions of the unincorporated areas.

Recreation Manager Spier reiterated that staff was confident that a 40,000 square foot building would fit the City's needs for the next 20-years. She indicated that part of the 40,000 square foot building has to be dedicated to joint programming with the School District if the City wants to be successful in the funding process. She identified the project timeline should the City be successful in attaining Proposition 14 funding.

Council Member Chang also stated her support for option 3.

Council Member Carr stated that the Library Building Committee had a couple of assumptions when the plans were drawn up: 1) City hall was to remain on this site, and 2) the pump station needed to remain as located. He expressed concern that the City is looking at building a state of the art library that the city/community would be proud of for many years. He would have preferred the City start with a blank slate, assuming that nothing would be staying on the property, including the pump station and city hall. This would allow the design of an absolute ideal state of the art library design. He stated that each of the four designs have great features and that he likes different parts from each one. However, there were things he did not like from each of the designs. He felt that the City

would be missing out by not starting with a blank canvass that allows the City to design the best facility that it can.

Recreation Manager Spier indicated that staff determined that the Building Committee had to start with some assumptions. When the City Council determined that this was the site, it was stated that staff should work around the existing library. Staff did ask the architect to use the existing library as another function besides the library with options 1 and 3. Option 2 was the "free slate" design. She stated that there was an assumption of \$700,000 to \$1 million to relocate the pump station. Staff is aware that there is no funding for city hall. Staff wanted to make sure that it did not short change city hall, parking, amenities or landscaping. She agreed that it would have been preferable to design with an empty slate.

Vote: *The motion carried unananimously (5-0).*

CONSENT CALENDAR:

Council Member Tate requested that Item 3 and staff requested that Item 5 be removed from the Consent Calendar.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **approved** Consent Calendar Items 4 and 6-13 as follows:*

4. **CONTRIBUTION TO SANTA TERESA CITIZENS ACTION GROUP FOR LEGAL FEES FOR CALPINE AIR PERMIT APPEAL PROCESS**

Actions: 1) **Authorized** Contribution to Fund Legal Fees of Santa Teresa Citizens Action Group for Appeal of Bay Area Air Quality Management District Permit Issued to Calpine Corporation; and 2) **Appropriated** \$7500.00 from the General Fund to the City Attorney's Budget.

6. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR BARRETT OAK SUBDIVISION - A**

Actions: 1) **Adopted** Resolution No. 5495 Accepting the Subdivision Improvements included in the Project commonly Known as Barrett Oak, and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.

7. **APPROVAL OF SCOPE OF SERVICES AND AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT FOR TRAFFIC SIGNAL DESIGN AT THE TENNANT AVENUE/NORTHBOUND 101 OFF-RAMP INTERSECTION**

Actions: 1) **Approved** the Scope of Services for the Design of a Traffic Signal at the Tennant Avenue/Northbound 101 Off-Ramp Intersection (Project Intersection); and 2) **Authorized** the City Manager to Execute the City's Standard Professional Services Agreement with Higgins Associates for Design Services for the Project Intersection in an Amount Not-to-exceed \$35,000. The Authorization is Subject to City Attorney Approval.

8. **VACATION OF A PORTION OF DIANA AVENUE - Resolution No. 5496**

Actions: 1) **Adopted** Resolution No. 5496 Declaring Summary Vacation of a Portion of Diana Avenue Public Right-of-way Adjacent to APN 726-13-001 & -002 and Near Monterey

Road for the Community Center Project; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.

9. **AUTHORIZE PROFESSIONAL SERVICES CONTRACT FOR DESIGN OF BOYS RANCH RESERVOIR #3**

Action: **Authorized** the City Manager to Execute the City's Standard Professional Services Agreement with Schaaf & Wheeler for Design and Construction Administration Services for the Boys Ranch Reservoir #3, in the Not-to-exceed Amount of \$198,600.

10. **APPROVAL OF CONTRACT/FUNDING FOR CONTRACT/TEMPORARY ENGINEERING SERVICES**

Actions: **Approved** the Contract and Funding for One Temporary Full-time and One Contract Part-time Engineer.

11. **FINAL MAP ACCEPTANCE FOR TROVARE PHASE II (TRACT 9345)**

Actions: 1) **Approved** the Final Map, Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.

12. **CONTINUE OPPOSITION TO CALIFORNIA ENERGY COMMISSION SITING REGULATIONS**

Action: **Authorized** Staff to Continue Efforts to Protest Changes in Administrative Regulations for the California Energy Commission's Siting Process.

13. **APPROVAL OF CONTRACT FOR HOUSING ELEMENT UPDATE CONSULTANT SERVICES**

Action: **Authorized** the City Manager to Execute a Consultant Services Agreement for Contract Consultant Services at a Cost Not to Exceed \$50,000.

Note: At the conclusion of considering all agenda items, Mayor Kennedy **requested** that Agenda Item 13 be reconsidered as he would need to abstain from voting on this item. (See action taken prior to adjourning to closed session.)

Action: It was the consensus of the City Council/Agency Commission to **Consider** Consent Calendar Item No. 22 at this time.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Agency Member Sellers and seconded by Agency Member Chang, the Agency Commission unanimously (5-0) **approved** Consent Calendar Item No. 22 as follows:

22. **ARCHITECTURAL SERVICES AGREEMENT FOR THE COMMUNITY**

PLAYHOUSE

Action: ***Authorized** the Executive Director to Prepare and Execute a Contract with ELS Architecture and Urban Design for the Schematic Design, Design Development, Bidding and Construction Documents Phases for the Community Playhouse at a Cost Not-to-Exceed \$277,000.*

3. OUT OF AGENCY SERVICE REQUEST, OR-01-05: MONTEREY - MORGAN HILL BIBLE CHURCH *(Continued from 6/6/01) - Resolution No. 5485*

Council Member Tate stated that he did not support the request when it was considered by the City Council previously and would therefore not support its approval this evening.

Action: *On a motion by Council Member Chang and seconded by Council Member Carr, the City Council, on a 4-1 vote with Council Member Tate voting no, **Approved** Resolution No. 5485, Approving an Extension of City Water and Sewer Service for the Morgan Hill Bible Church Located at 15055 Monterey Road. (APN 779-04-016 & 017).*

5. ADOPT RESOLUTION OF NECESSITY FOR PROPERTY ACQUISITION OF PROPOSED BUTTERFIELD DETENTION BASIN

Director of Public Works Ashcraft presented the staff report. He indicated that a real property appraisal has been prepared for the property and that this offer was made to the property owner. However, the property owners were not able to negotiate with the City's property negotiator a settlement. He indicated that the action before the City Council does not mean that the City would stop negotiations but only means that the Council has to make certain findings of public necessity if the action is to be approved. This would set a series of actions that would result in acquisition of the property. In the worst case scenario, it would mean a court of law to decide the fair value of the property. The issue before the City Council is not the value of the property but whether this site is the best site for the project identified in the EIR.

Mayor Kennedy opened the floor to public comments.

Robert Costa, 10932 Canyon Vista Drive, Cupertino, informed the City Council that he and his sister are the general partners of the Costa Family Partners, legal owners of the subject property. He presented a background history of the property. He said that the subject property has been in the family for almost 90 years, noting that family members are not land speculators looking for a real estate deal for a quick profit. The Costa family is trying to carry on a tradition of good stewardship of the real estate resources in the family. The family has managed their property for the highest and best use over an extended period of time. The Costa family anticipated the need to develop the property 10+ years ago, subdividing and recording 10 separate parcels. He has Certificates of Compliance that established 10 legal lots within the general area identified by staff. The legal description of the subject property is identified on page 51 of the City Council's packet and accurately describes the subdivision of 8 lots for a total of 10 contiguous lots. He stated that there has been some confusion as to whether or not the lots are in fact legal lots and stated that the city's documents legally describe them as such.

Mr. Costa noted that the 8-10 lots predate the Butterfield EIR dated October 1992. This document was not known to the family/property owners until February 2001 when Mr. Ashcraft described it to the family in a meeting held at City Hall. He indicated that there was no notice of the Butterfield EIR activity provided to the family at the time it was occurring. Neither the property nor the owners of record reside within the city limits, the Urban Service Area or Sphere of Influence. He felt that the practice of non notification should be changed. Had the family known, at the time, they could have pointed out deficiencies of the plan rather than having to wait until tonight to do so.

Mr. Costa stated that the Parks Master Plan completed the end of 2000 and the beginning of this year has within it a bike path proposed across the subject property with no notice given to the property owners of this activity or planned use. On January 11, 2000, William Shintzer, property appraiser, met with his sister on the subject property and visited other properties in the immediate vicinity for the purpose of putting together an appraisal. At that time, the previous subdivision recording was communicated to Mr. Shintzer indicating that they were legal lots. The resulting appraisal was a surprise to the family as it was appraised for agricultural land and that only larger farm parcels sold previously from January 16, 1997 to June 21, 1999 as considered comparable sales. He felt that these comparables have been used and included in the three subsequent written offers to the family dated June 7, 2000; November 30, 2000; and February 15, 2001. The Council's briefing documents, page 47, seems to imply much more recent appraisal data, noting that it has not been made available to the Costa Family in any of the offers seen.

Mr. Costa said that the subject property is currently in the jurisdiction of Santa Clara County. Despite assurances by the County that the Costa family possesses' legal lots, there seems to be a persistent effort on the part of City staff and its agents to not recognize the lots as such. The County has openly encouraged them to submit plans for development on these lots, noting that some of the lots are designated within the FEMA 100-year Flood Plane. However, the County has indicated that raising building pads above the base flood elevation is a common and routine procedure and should not pose a problem for development. He noted that FEMA mandated flood insurance is routinely available. Since the average size of the lots are beyond 2.5 acres, the Costa family is also able to apply for both primary residences and secondary structures on each lot, thereby, further enhancing their intrinsic value.

Mr. Costa felt that the history is relevant to the four points that the City Council is being asked to consider this evening on the hearing of necessity. He addressed the four points as follows:

1. Does public interest and necessity require the proposed project? Mr. Costa felt that the answer is "yes" as the EIR does establish the need for a detention basin to handle the infrequent high volume storm drainage from the upstream Butterfield Boulevard areas.
2. Is the proposed project planned or located in a manner that will be most compatible with the greatest public good and the least private injury? He felt that the response to this point is "no." He felt that the public good arising from storm water detention seems obviously unapparent and did not believe that there is debate about this. However, the "greatest public good" would not be achieved by paying for 8 high valued legal lots when lower valued adjoining, non subdivided agricultural lands are available for the same purpose. Conversely, not paying the inherent value of the 8 legal lots would not result in "the least private injury" for the property owners and felt that the owners would be severely injured.

3. Is the property described in the resolution necessary for the proposed project? He felt that the response is "no." He said that the EIR did not evaluate this particular grouping of lots, therefore, the response should be no. There is no evidence of an effective alternative site study having been conducted in the EIR. He did not believe that there are alternatives for drainage along Butterfield Boulevard but that there are no alternatives identified as having been studied as the site of the detention basin. He felt that a comparably sized site immediately adjacent to the proposed site could just as effectively detain storm water and be metered out to the down stream drainage system at a rate that can be assimilated. He said that a true "ag property" immediately across Maple Avenue was sold in the last several years and was cited in the appraiser's comparables analysis.
4. Has an offer of just compensation been made to the owners of record? He felt that the response to this question is "no." An offer of just compensation for 8 legal lots has not been made. An offer for a much larger piece of agricultural land has been made and has been the subject of the comparable study.

Mr. Costa stated that in speaking with each Council Member individual, he and his sister have come to realize that each Council Member has long term family roots in the Morgan Hill area as well. He noted that with these roots comes multi-generational family stewardship responsibilities. He encouraged the City Council be mindful of the fact that the Costa family has historical roots and multi generational family stewardship responsibilities with regard to the property and the 8 lots that need to be attended to. He requested that the City Council balance its decision in this regard. He further encouraged the City Council to cast a "no" vote with regard to the resolution of necessity for this particular land acquisition and to instruct city staff as follows: 1) explore alternate adjacent sites that have lower inherent values and will have less cost to the city for the acquisition of a detention basin. 2) If after a truly effective alternatives analysis finds that these 8 legal lots are the only ones suitable for such a detention basin, that the City prepare a just offer for these lots.

No further comments were offered.

Mayor Pro Tempore Sellers stated that significant issues have been raised by Mr. Costa and that the City Council had the opportunity to give prior review to the issue. He recommended that the City Council not proceed with this item this evening and that this item be referred back to staff for further consideration of the issues raised by Mr. Costa. He felt that this is the end of the line of the project and that he was anxious about proceeding with the Butterfield extension that is currently underway to Tennant, noting that delay of this item would not impede the extension. Given all of the significance of the considerations raised this evening, he would support sending this item back to staff for further consideration.

City Manager Tewes informed the City Council that he met with Mr. Costa and Ms. Gutierrez earlier where they raised the issue of whether or not they had received notice in 1992. At that time, he informed Mr. Costa and Ms. Gutierrez that he was not aware of what notice had been sent. Subsequently to the meeting, he was able to find that notice was sent to the property owners of record at that time, noting that the Boninos received the notice in 1992.

Mr. Ashcraft informed the City Council that the City's record of the EIR shows that the City sent a letter in June 1992 advising of a hearing before the Planning Commission of the EIR to Tony and

Ellen Bonino with an address on Colony Avenue, San Martin. He stated that it was his belief that the City had no requirement to send the notice at the time, but that the City's records show that there were approximately 40 property owners affected by the Butterfield alignment from Cochrane Road south. City staff sent notice to all 40 property owners according to City files.

Actions: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member, Chang, the City Council unanimously (5-0) **tabled** this item for two months to allow staff to investigate issues raised by Mr. Costa.*

PUBLIC HEARINGS:

14. ZONING AMENDMENT, ZA-00-14: OAK PARK - GENTILE (Continued from June 20, 2001) - Ordinance No. 1514, New Series

Director of Community Development Bischoff presented the staff report. He noted that the Council took no action at its last meeting and directed staff to meet with the applicant and the adjacent neighbor in order to try to achieve a compromise acceptable to all parties. Staff met with both parties and reviewed a number of different alternatives that might be acceptable to both parties. He reported that an agreement had not been reached. He indicated that at the last meeting, Mr. Gentile agreed to eliminate the balcony. At the site visit, Mr. Gentile agreed to eliminate the balcony and to recess the window two feet from the wall to mitigate the concern of having someone looking out the window into Ms. Perkrol's backyard. Mr. Gentile also indicated his willingness to reduce the height of the wall by two feet from 19'10" to 17'10". He indicated that the neighbor felt that Mr. Gentile's modifications would still create the same impacts and that she would not be supportive of them. He indicated that an Ordinance has been included in the City Council's packet consistent with the Planning Commission's recommendation on this matter. The Planning Commission recommends the approval of the front addition but not the addition to the rear.

Mayor Kennedy opened the public hearing.

Alfonso Gentile, applicant, indicated that he has agreed to modify his plans to reduce the balcony to a fixed recessed window to address Ms. Pekrol's privacy concern. He also agreed to reduce the height by two feet. However, Ms. Pekrol still does not want him to build the addition. He has done everything that he can possibly do to change the structure and that there is nothing else that he could do to address Ms. Pekrol's concerns. He indicated that the addition is not for aesthetical purposes but to add a third bedroom (extra living space).

Patricia Pekrol, 965 Oak Park Drive, stated that she understands that there are other homes similar to what is being proposed. However, she purchased her home based on her current views. She indicated that a 19-foot wall would completely eliminate view of the sky and would provide a claustrophobic environment that mimics those seen with condominium complexes or apartments. She noted that the homes were built in accordance with the CC&Rs, each different from the other, to allow for a more homelike versus apartment-like complex even though they are built on zero lot lines. She has worked to make her small backyard as pleasant as possible with a garden like effect, noting that there is only 9 feet between her home and that of Mr. Gentile's. Her plants would be jeopardized if Mr. Gentile is allowed the addition. Also, solar heating would be eliminated, resulting in her PG&E bills going up. She asked what would be the impacts to her yard and plants while the

construction is going on next door? She expressed concern with dust and debris. As a single parent, she worked very hard to purchase this home, an investment for her future retirement. The expansion will affect the selling power of her home. She felt that no consideration is being given to aesthetics, her yard or the darkness that the wall would create.

Mayor Kennedy asked if the Homeowners Association CC&Rs addressed these modifications? Ms. Pekrol was not sure if limitations are included in the CC&Rs. She requested that the height of the wall be reduced by three feet, maintenance of the slope and that the extension to the back of the house be denied.

No further comments being offered, the public hearing was closed.

Mayor Kennedy asked if it would be appropriate to refer this item to the Architectural and Site Review Board (ARB)?

Mr. Bischoff responded that it would be possible to refer this item to the ARB. He said that it seems that the issue is the height of the wall and not the appearance of the wall. He indicated that he asked Ms. Pekrol how much of a concern was the sunlight issue and that he offered to hire someone to perform calculation as to the effect of sunlight on the yard. He indicated that Ms. Pekrol did not feel that it was significant enough to do that. He confirmed that the homes in the subdivision have zero lot lines on one side and 7 feet on the other side. He suggested a reduction in the ceiling height from 9 feet to 8 feet be considered.

Mayor Kennedy stated that he would support referring this request to the ARB.

Karen Gentile addressed the garden affect and stated that she has bushes twice her height even though she has the lack of sunlight being addressed by Ms. Pekrol due to high homes on both sides of her home. She said that she would be willing to break up the wall with the installation of foliage to ease the burden of the wall and provide a greenery affect. However, this offer was not considered by Ms. Pekrol. She said that when they moved into the home, they did so with expectations of expansion as other homes are built similarly to the proposed design. She indicated that she has received approval from the homeowners association for the expansion. She requested that she be allowed to retain the height at 7 feet but would agree to a six-foot height restriction, if necessary for approval.

Council Member Chang recommended Council approval if both parties agree to reduce the height of the roof as proposed by staff.

Council Member Tate noted that this application was referred to the Planning Commission without a compromise being reached. If referred to the ARB, he questioned whether a resolution would be reached. He felt that a decision needs to be made as the City is close to what can be done as a compromise. He stated that he would support the request if the roof can be reduced by three feet on one side and the elimination of the two-foot extension.

Mr. Gentile stated that the two-foot extension extends up from the bedroom and creates closet space on either side of the recessed windows. Because of the lack of wall space in the area, he utilizes the area that goes over the first floor to the rear as closet space.

Mayor Kennedy asked if the window could be recessed, eliminating the protrusions from sticking out. Mr. Gentile responded that the window is at the edge of the room and that the protrusion extends 2 feet. Considering a 6:12 pitch roof, he would have a six foot high closet. He indicated that he could eliminate the projections.

Council Member Chang recommended that the roof height be reduced and that Ms. Pekrol consider approval of the wall as proposed as a compromising conclusion.

Mayor Pro Tempore Sellers understood that the extension would be protruding two feet in the back but that the privacy gained by this would be off setting. He stated that he would support a six-foot slope and a three-foot reduction but that the rear would remain the same.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** this application and 2) **Directed** staff to return with an amended Ordinance, incorporating the specific recommendations identified (e.g., six foot roof slope/3 foot reduction, rear to remain the same, front elevation per Planning Commission recommendation, and installation of landscaping as offered by the property owner.)*

15. TEXT AMENDMENT - REVISION TO RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCE) STANDARDS AND CRITERIA. APPLICATION ZA-01-08 (Continued from June 20, 2001) - Ordinance No. 1517, New Series

Planning Manager Rowe presented the staff report indicating that this item was continued from a previous City Council meeting in order to address Mr. Oliver's concern over two changes being proposed: 1) Open Space (Section 2. B1a) (concern that ongoing projects would not be able to gain points as depth has already been established). The Measure P subcommittee recommends defining the open space buffer without having numbers. 2) Orderly and Contiguous (Section 4 B.2.) (The Planning Commission proposes to reduce the point value for projects that are within proximity to water serves from 2 points to 1 point as it is a duplication of points given elsewhere in the Public Facilities category). The Commission wanted to place a greater value/weight on the criteria that gives points for the overall excellence of the project master plan. Leaving the points as proposed, would make it possible to achieve maximum points in this category without having to address the master plan criteria. Taking 1 point away would affect projects outside the core area because there will not be an opportunity to make up a point in this area. While there are reductions that may affect Mr. Oliver's project as an on going projects, he has access to points that new projects do not, leveling the playing field.

Mayor Kennedy opened the public hearing.

Peter Burcat stated that it was his belief that Council Member Tate requested that staff look at different ways of addressing the need to increase the awareness of energy efficiency. He noted that this issue was not addressed. He stated his support of energy efficient uses under part 5.

Council Member Tate stated that at the end of the session, he was comfortable with leaving the criteria as written this year but that he requested that staff include it in next year's Measure P competition, placing more emphasis on a stand alone issue and not dilute other criteria.

Mayor Kennedy expressed concern with delaying the need for incorporating energy efficiency techniques as the need is now.

Mayor Pro Tempore Sellers recollected that developers indicated that they could not incorporate changes into next year's competition, given the timeline.

Dick Oliver stated that the change in open space is a good one, but it does affect his on going project. Regarding the Orderly and Contiguous category, he said that the main competition his project faces are other on going projects such as Warmington Homes and Central Park as they are located within the core and have a chance of maximizing points in the next competition. He said that he would have a hard time scoring high enough to attain allocations because of the change.

Carolyn Hipp, Warmington Homes, requested that Council adopt the ordinance text before it. She indicated that she served on the Measure P Subcommittee which has gone through great lengths to analysis the criteria categories and make improvements that help projects to become better every year. Some of the issues raised by Mr. Oliver were discussed by the Subcommittee, including discussions of ongoing and core issues. The Subcommittee discussed agendizing these issues for next year's criteria and consider it for future years' competition.

Ralph Lyle indicated that he was not speaking for the Planning Commission. He stated that the issues raised by Mr. Oliver could impact his project. However, there were other changes made that would benefit his project. He noted that changes were also made that would affect Warmington Homes and Central Park projects. All projects will tend to lose points in some areas and gain points in other areas when the criteria is changed. He felt that the standing of these projects is relatively the same. In general, he felt that the changes would provide a little more differentiation between projects.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1517, New Series, Amending the Standards and Criteria and Procedures of the Residential Development Control System.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1517, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**16. DEVELOPMENT IMPACT FEE INFLATIONARY AUTOMATIC INCREASE -
 *Resolution Nos 5497 & 5498***

Director of Public Works Ashcraft presented the staff report. He indicated that there are no

significant cost increases or decreases that would affect impact fees by a 4.2% increase to all existing fees. He informed the City Council that staff is in the midst of a study to review all City impact fees and that there was a need to update water, sewer and storm drain master plans first. Within six months, it was his belief that there would be some substantial impact fees that may come before the City Council.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5497 Rescinding Resolution No. 5402 and Amending Resolution No. 4997 to Adjust the Traffic Impact Mitigation Fee per the Current Engineering News Record Construction Cost Index.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5498 Rescinding Resolution No. 5403 and Amending Resolution No. 4930 by Increasing the Development Impact Fees per the Current Engineering News Record Construction Cost Index.*

17. GPA-98-02 AND ZA-01-06: CITY OF MORGANHILL - GENERAL PLAN UPDATE, REZONING OF EFFECTED PROPERTIES AND MASTER EIR - Resolution Nos. 5500 & 5501 and Ordinance No. 1519, New Series.

Director of Community Development Bischoff indicated that in attendance was Chwen Siripocanont, traffic engineer; Erin Banks, environmental consultant; and Paul Crawford, primary planning consultant who assisted staff with the update. He addressed the process and highlighted changes recommended by the Planning Commission as well as those recommended by the City Council. He informed the City Council that it has come to staff's attention that there is a procedural requirement to provide a certain period of time for commenting agencies to review the City's responses to comments before taking final action on the plan. He indicated that staff did not have the final responses until just recently and therefore cannot meet the time commitment. He recommended that the City Council close the public hearing, provide staff with direction in terms of changes it would like to see incorporated by consensus, and take no action until July 25, 2001 in order to allow the period to close for providing responses to comments by the commenting agency and staff will have a completed document that incorporates the City Council changes.

It was noted that Council Member Chang has a conflict of interest with Map No. 6 as well as to the area adjacent to Wright Avenue.

Mayor Kennedy expressed concern with bisecting the community with a lot of arterials as opposed to finding traffic calming ways of getting people to and from their destinations. Mr. Bischoff noted that action 2.6 addresses this concern.

Mayor Kennedy expressed concern that this simple statement would get lost in the course of the policy. He would like to see a stronger action item other than conducting a traffic calming study.

Erin Banks apologized for the delay in adopting and certifying the documents before the City Council. She stated that it was an oversight on her part for not notifying the city about the advanced time required in sending responses to commenting agencies. She highlighted the revisions included in the Final EIR in response to comments to the draft EIR. The most significant revisions resulted in Mitigation Measures being added or removed from the document or general plan policies added as a result of comments on the draft EIR (e.g., addition of cultural resources mitigation measures, removal of one air quality mitigation measure dealing with compliance of transportation control measures, and the addition of new policies based on comments submitted by the California Department of Fish and Game).

Mayor Kennedy opened the public hearing on the six areas and proposed policy changes.

Randy Barbaglia, 505 Claremont Drive, indicated that he would answer any questions that the City Council may have relating to the Acton property. He felt that this would be a nice project and would be a benefit to the City as recommended by staff.

Daryl Kruse, 17101 Kruse Ranch Lane, addressed the Urban Growth Boundary (UGB), stating that by prior resolution of the City Council, the entire 40 acres was included in the UGB. The map presented by staff reflects only the eastern portion which is not his family's property. He indicated that the Kruse family have been members of the community for many decades and that the property has always been within the city limits and has had city utilities delivered to the property. He did not want to see any deviation of the removal of the property that is currently in the UGB.

Mr. Bischoff clarified that the Kruse's property is in the UGB and is not proposed to be removed. He stated that staff misunderstood the request as a letter is attached to the third tab from an attorney representing the Kruse's talking about including the property and that Mr. Kruse spoke at the last meeting stating that not all of his property was included. He indicated that the gray area depicted in the map is not recommended for UGB inclusion.

Fred Domino requested that the property located at 1070 West Edmundson Avenue be included in the UGB, noting that this is the only property in the area that has an urban land use designation that is located outside the UGB. He requested that it be included in the UGB based on the previous urban land use designation in place for over 10 years, predating the UGB boundary map.

Rocke Garcia, 100 East Third Street, addressed his Madrone Crossing Project. He stated his concurrence with the General Plan Task Force and Planning Commission recommendation.

Vern Delgatty representing Mr. and Mrs. Malone, felt that the City has a great opportunity to include the Malone property bounded by DeWitt, Spring and Edmundson Avenues, west of Park Manor, in the greenbelt study in order to preserve the land as a permanent greenbelt. The best way of reserving the greenbelt is to design/plan it with a possible 18-hole golf course that would take approximately 74 out of the 124 acres, allow lands to be incorporated as part of the park area, and develop a clustered housing project which would help offset some of the facilities for the golf course. A public operated or public use is proposed, allowing equestrian trailing, bike/roller blading trails, provide vantage view points on the hillside, keep housing to the lower part of the property, and scope the golf course into the hillside. He felt that the 8-lot project would be sold to a developer and the rest of the property as a profit gain project. All of the money will be placed in a private

foundation which will go toward building a high school in the area.

No further comments being offered, the public hearing was closed.

Exhibit D

1. *It was the consensus of the City Council to **concur** with Alternative 1, reducing industrial land by 40 acres.*
2. *It was the consensus of the City Council to **retain** designation as Campus Industrial*
- 3-5 *It was the consensus of the City Council to **concur** with Planning Commission recommendation.*

Mayor Pro Tempore Sellers stated his concurrence with the recommendation. However, he would like to include item 5 (western portion) as part of the discussion of the greenbelt plan as it is a significant piece of property to the community.

6. *It was the consensus of the majority of the City Council to **concur** with the Planning Commission's recommendation (Council Member Chang abstaining).*
- 7-8. *It was the consensus of the City Council to **concur** with the Planning Commission's recommendation.*
9. *Azar property.*

Council Member Chang and Mayor Kennedy did not believe that a property owner's parcel should be split in zoning. Mayor Kennedy recommended that the commercial designation be extended a little further south only on the west side of Monterey Road, recognizing the uses that currently exit.

Action: *It was consensus of the City Council to **extend** the commercial designation to the south on the west side of Monterey to include the Azar property.*

- 10-13. *It was the consensus of the City Council to **concur** with the recommendations of the Planning Commission.*
14. *It was the consensus of the City Council to **include** property in the City's UGB.*
15. *It was the consensus of the City Council to **concur** with the Planning Commission's recommendation.*
16. *It was the consensus of the City Council to **concur** with the Planning Commission's recommendation and to **consider** the proposal as part of a greenbelt study for possible clustering in exchange for preserving the entire parcel for a greenbelt/open space use.*

Mr. Bischoff recommended the following modifications:

Land Use Element Action/Policy 3.4 - The addition of a sentence to read: "Reevaluation of the Urban Growth Boundary location may be necessary in conjunction with the Greenbelt Study to be undertaken in the year 2002." The inclusion of this sentence makes it clear that there may be another opportunity to revisit the Urban Growth Boundary.

Open Space & Conservation Element - The addition of an Action Item 2.12 to read: "The Greenbelt plan shall include an evaluation of prominent hillsides bounded by Edmundson Avenue, DeWitt Avenue, Spring Street and Del Monte/Sunset Drive and properties on the eastern face of El Toro and include strategies for the preservation of these important visual resources."

Council Member Tate expressed concern with changing Policy 3.4 as he felt that the general philosophy is that the City only changes the Urban Growth Boundary once every ten years when it looks at the General Plan. He felt that the City would be stating a policy implementation that would open the gates to the dam if the City starts allowing inclusion based on studies.

Mr. Bischoff stated that he understood Council Member Tate's concern. However, he did not believe that the City Council would want to take an action that is inconsistent with the General Plan. The language as proposed states that " . . . it may be necessary in conjunction with the Greenbelt to be undertaken in the year 2002." He felt that the Action item makes reference to a specific study at a particular discrete point in time, addressing the concern of not opening up the issue to a variety of concerns.

Action: *It was the consensus of the Commission to **concur** with staff's recommended language.*

17. *This area is already included in the City's UGB, therefore, **no change necessary**.*

Exhibit B - Policy Changes

Mr. Bischoff noted that Mayor Kennedy felt that the policy language regarding north/south arterials did not go far enough. He asked if there were other changes that the City Council would like to see in the policies?

Council Member Tate referred to Policy 7a (page 2) that states "Plan for a population up to 48,000 residents in 2020." He inquired if this policy could be made more general as it seems that the City is setting a population cap as a policy as part of the General Plan. He felt that the City should leave this open as the City would be looking at extending Measure P, noting that some members of the City Council have expressed interest in special projects in the downtown area that might impact this policy.

Mayor Kennedy recommended that language be added to state "or as determined by the Measure P study."

Mr. Bischoff recommended that language be included to read: "Population in a range of 48,000 to 50,000" (within a certain range).

Council Member Tate stated that he did not have a problem indicating a population range.

Council Member Chang inquired why the population was being changed from 46,600 to 48,000? Mr. Bischoff responded that the population was changed at the Planning Commission level after the General Plan Task Force concluded its recommended Plan. The 48,000 population was a linear extension of 250 units per year out to the year 2020. The Planning Commission found that because of the details of the formula of Measure P, the City may end up with a population higher than 46,600. The Planning Commission felt that using a figure of 48,000 was probably a better number, recognizing that you have more people living in the homes than the formula might suggest.

Council Member Chang stated that the 46,600 was a population projection, a fixed number at the time and not based on 250 units a year.

Mayor Pro Tempore Sellers recommended that the population be tied to the Residential Development Control System, therefore, you are not held to a specific number.

Mayor Kennedy recommended that instead of specifying a population number that the statement read: "Plan for a population as required by the Residential Development Control System."

Council Member Chang felt that if the City does not define the population it would leave the City open for individuals to come in and state that there is an opportunity to build more homes. She noted that the population, as defined by Measure P, is 38,800 at the year 2010.

Mr. Bischoff stated that the environmental documents are predicated upon certain assumptions. The assumptions are tied more toward traffic than anything else. He indicated that the traffic modeling went out to 2025, noting that the plan is to the year 2020. He felt that the City has some leeway in terms of what the City can do. He stated that the population does not need to be specific and could indicate a range. He did not recommend that the population be left open.

Mayor Kennedy recommended that the policy be amended to state "for a population of approximately 48,000."

Action: *It was the consensus of the City Council to **support** indicating "a population of approximately 48,000."*

Policy 11.c page 3

Council Member Tate referred to Policy 11.c (page 3), noting that a previous action changes this policy.

Mr. Bischoff did not believe that a change would be necessary as office industrial still remains on Diana Avenue. Also, the City Council left industrial between Condit and Highway 101. Therefore, 11.c remains acceptable.

Action Item 17.9

Council Member Chang referred to action item 17.9 (page 5) that talks about the hospital operating

in the City. She noted that one parcel was left as campus industrial. She indicated that the City's current zoning ordinance does not allow medical offices, hospitals, or medical uses in any of the industrial zonings. She recommended that an action item 17.10 be added to state: "Amend the zoning ordinance as necessary to allow medical offices and medical uses in all industrial zonings."

Council Member Tate stated his support of Council Member Chang's recommendation as the City needs the maximum amount of flexibility for medical uses.

***Action:** It was the consensus of the City Council to accept Council Member Chang's recommended inclusion of an action item 17.10 to read as stated above.*

Action 2.6, Action 3.21 (pages 6 and 7)

Council Member Tate recommended that if there is to be a change to action 2.6 (calming study) that Action 3.21 (addition of the Murphy Avenue study) be coupled together with it.

Mayor Kennedy stated that there are traffic calming studies that are token comments. In order to address this issue, he felt that the action item needs to be clarified. He requested that the minutes include his specific request that the circulation element focus on alternative traffic circulation devices other than conventional arterial collector streets to provide local serving traffic the means of getting to their destination without having to utilize high volume collector streets and arterials. He further recommended that the city proceed with the studies.

Policy 19a (page 5)

Council Member Carr referred to Policy 19a that reads "Work with the Morgan Hill Unified School District and private education providers of grades K through 8 to assure coordinated planning . . . " He asked staff why this language was added?

Mr. Bischoff responded that the language was added by the Planning Commission because they felt that the City was beginning to see private schools in the community. The Planning Commission felt that private schools would also provide facilities and services and that the Planning Commission did not want to limit this policy just to the Morgan Hill Unified School District.

Council Member Carr expressed concern that private schools do not have a geographical boundary in which they are serving. Therefore, he did not know how the City would coordinate planning new development with private schools. He noted that individuals can attend private schools from anywhere in the community/area where the public schools have a mandate in which they need to provide education. He did not know why it would be important to add this to the policy as he felt that it would confuse the issue.

Mayor Kennedy said that locations of schools are independent of where the School District decides to send students. He felt that the School District could send students to whatever school they want irrespective of the school's location.

Council Member Carr noted that Policy 19m encourages the School District to locate elementary schools at locations designated on the Land Use Diagram, noting that the General Plan Task Force

spent a lot of time looking at where the population of students would be coming from and where the schools should be cited.

Mayor Pro Tempore Sellers stated that a parallel does not exist because prior land use policies or other developments did not parallel with development of schools. He felt that the goal has always been there and felt that it should remain but that sometimes it gets at odds with where development is actually taking place.

Action: *It was the Consensus of the City Council to **delete** reference to private schools.*

Mr. Bischoff recommended that the City Council continue this item to July 25, 2001. He stated that staff would return to the City Council with a final document that includes all modifications as stated.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Continued** this item to July 25, 2001 in order to allow the closure of response to comments from responding agencies.*

18. A REQUEST TO AMEND ZA-99-14: CITY OF MORGAN HILL COMMUNITY CENTER AND COMMUNITY PLAYHOUSE - Ordinance No. 1520, New Series

Director of Community Development Bischoff presented the staff report. Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Zoning Amendment (ZA) Ordinance No. 1520, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1520, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING ZONING AMENDMENT, ZA-99-14: CITY OF MORGAN HILL (APN 726-13-002 & 003) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

OTHER BUSINESS (continued):

19. NEW CITY LOGO TASK FORCE

City Manager Tewes presented the staff report.

Mayor Kennedy indicated that Mayor Pro Tempore Sellers has requested that he serve as the City Council's representative to the New City Logo Task Force.

Council Member Chang asked if other Council Members believe that the existing logo needs improvement/enhancement?

Mayor Kennedy felt that it would be a good idea to take a fresh look at the City Logo to see if it

should be improved.

Council Member Tate stated that he did not have a problem with taking a new look at the City Logo. However, he noted that the City has been busy recently and that he hopes that this does not become a high priority issue as there are so many other activities/projects going on.

Mayor Pro Tempore Sellers felt that a City Logo reflects the community and that the existing logo has served the community well but that it is dated. He recommended that thought be given to what the City wants to say to the community and about who we are as a community. He felt that this is the appropriate time to reflect what the community is all about.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **concurred** with Mayor Kennedy's appointment of Mayor Pro Tempore Sellers to Serve on the New City Logo Task Force.*

20. MEASURE P APPEAL APPLICATION AP-01-01: COCHRANE - COYOTE ESTATES, MISSION RANCH AND ALICANTE DEVELOPMENTS - Resolution No. 5473

Planning Manager Rowe presented the staff report. He recommended that Resolution No. 5473, Section 1.c, last sentence, be modified to include reference to the Alicante and Coyote Estates Development projects.

Council Member Tate inquired if the allocations were made available initially to the large projects, would this have been the allocation and whether the highest scoring projects were awarded the allocations they were asking for?

Mr. Rowe responded that this would be one likely scenario of allocation distribution. He stated that he had to abstain from being involved in the competition in detail this year, owning property close to one of the projects. He deferred the response to Ralph Lyle.

Ralph Lyle informed the City Council that a number of changes would have been made because some allocations became available as other projects were not able to perform and the fact that there were a limited number of projects that could step forward and use the allocations. There may have been a slight variance in allocation. Had the Planning Commission known that there were two extra allocations that it could have used into next year's allocation, they could have gone to the Warmington Homes project as it was a higher scoring project.

Council Member Tate noted that the Coyote Estates project did not receive additional allocations for Fiscal Year 2003/04 and felt that the text in the Planning Commission resolution states that it should have received allocations. Mr. Rowe responded that the Planning Commission allocated the numbers being requested. The project, having extended street improvements beyond the developed area, was able to take immediate advantage of allocations that were scheduled to expire the end of last month. Therefore, there are five allocations for the Coyote Estates project that were allocated in Fiscal Year 2000/01, noting that the allocations were awarded sooner than what was originally

anticipated.

Mayor Kennedy opened the floor to public comment.

Dick Oliver informed the City Council that he was appreciative of the Planning Commission's recommendation and that he supports it. He indicated that Warmington Homes was the highest scoring project which received 24/15 allocations and that Mission Ranch was the second scoring project. Under this revision, Mission Ranch would receive 15 allocations, 9 allocations less than requested the first year and received 9 allocations versus the 15 allocations that Warmington Homes received. The Planning Commission awarded what was requested by Coyote Estates. This was only possible because Coyote Estates and Scott Schilling's project were able to proceed because maps were ready to record. He noted that the Coyote Estates project did not receive 100% of what it requested in the initial application but that it did state that it would be willing to use any number of units available.

Scott Schilling stated his support of the Planning Commission's recommendation. He said that allocations have gone to waste at the end of the year when projects were not able to perform in the past. He benefitted from the three allocations that he received and that he would be able to use this year's allocation based on streets being installed and lots recorded. He was able to pull permits for the three allocations and will begin construction prior to June 30, 2001. He noted that the Central Park project was the third highest scoring project, initially receiving a total of 15 allocations (10/5). With the three additional allocations, it will give the project 18 allocations.

No further comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Planning Commission's Supplemental Award of Building Allocations.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Denied** Remaining Appeal Items and **Adopted** Resolution No. 5473 with Findings, modifying Section 1.c. to include reference to the Alicante and Mission Ranch projects.*

21. HOUSING TYPE DISTRIBUTION AND TERM FOR THE 2001-02 MEASURE "P" COMPETITION (FY 2003-04 BUILDING ALLOTMENT) - Resolution No. 5499

Planning Manager Rowe presented the staff report. He informed the City Council that the Planning Commission is recommending that for large projects, the competition be limited to ongoing projects for the following reasons: 1) the number of allocations available is relatively small (49 units); 2) when you factor in the prior commitments on the east/west Monterey Road split, four more units must be allocated to the east of Monterey Road and as a minimum, 33 units must be awarded to west side projects. In looking at the other set aside categories such as the affordable set asides, it is expected that 28 units would be awarded east of Monterey Road to the South County Housing Church Street Housing project or First Community Housing Murphy Ranch project. These affordable allocations would be included in the east/west equation. This would result in 23 units being made available in the open market competition for larger developments east of Monterey

Road. He addressed other allocation scenarios, indicating that in the worst case scenario, there would be only six units available to give to a new project or to an ongoing project located east of Monterey Road, and in the best case scenario, 23 units would be available for the balance of Fiscal Year 2003/04. The Planning Commission felt that for this year's competition, the allotment for larger projects should be limited to ongoing projects. This would result in a larger pool of allocations being made available to new development next fiscal year.

Council Member Tate noted that in the previous agenda item staff indicated that the Planning Commission is not recommending a separate set aside for ongoing projects. Now staff is stating that only ongoing projects are eligible.

Mr. Rowe stated that with the 49 units available for the open market competition, there is a separate competition within that for projects that are small projects (6-15 units). By limiting the competition for larger projects to ongoing projects, it acts the same way. The previous agenda item was stating that you would have a separate set aside for ongoing projects, a set aside for new projects, and a set aside for small projects. This would result in three competitions within the open market where you have a larger pool of allocations available. Under this agenda item, the Planning Commission is recommending that the competition be limited to ongoing projects this year based on the limited units available.

Mayor Kennedy opened the floor to public comment.

Stewart Fahmy stated that he e-mailed and faxed letters to each Council Member indicating that he was not in support of limiting the competition to ongoing projects. He did not believe that the Planning Commission or City Council has the authority to limit the competition to ongoing projects. He stated that his application did not score high enough to receive allocations last year. However, in the post application presentation, recommendations were given to him for improving his score in the next competition, one of which was acquiring a piece of property adjacent to his project. He did not believe that it was fundamentally fair not to be able to compete again.

Rocke Garcia, 100 East Third Street, stated that he believes in the fairness of competition. He addressed Fischer Creek as it relates to his Madrone Crossing project. He said that by the time the Regional Quality Control Board completed its review of the project, he had to bond with the City of Morgan Hill and the Regional Quality Control Board to improve the ditch along Santa Teresa of \$1.2 million. This was up-front cost baring on the number of units he already has (60 units recorded). He would like to have others in the competition but felt that there are so few units to be made available that he would be fighting for those units. He requested that the City Council support staff recommendation and limit the competition this year.

Dick Oliver stated his support of the Planning Commission and staff's recommendation. For the number of allocations available, he did not believe that it made sense to have a competition, based on cost and time.

Scott Schilling stated his support of the Planning Commission's recommendation. He said that the east side is the only category that they recommend a closed competition based on the limited number of allocations on the east side of Monterey Road. There are five large projects that would need to compete for 6-23 allocations. He felt that this amount was negligible compared to what each project

needs to complete one's project. He requested that these allocations be sent back to the Planning Commission and have them award these allocations based on project scores to the five projects that received allocations. Another alternative would be to send the allocations back to the Planning Commission and that they divide the allocations by five to each of the projects. He felt that it would be a waste of time to compete for the allocations available.

Ralph Lyle, speaking as a private citizen, stated that there are 6-23 allotments available on the east side, thus the recommendation by the Planning Commission. Of the four ongoing projects located on the east side, the likely request would be for 91 units with a 6-23 unit availability. The Planning Commission was concerned with the cost incurred by developers with little likelihood of success. Arguments presented to the Planning Commission were such things as 1 point away from winning the competition and that changes were indicated in order to improve projects' scores. However, with the number of allocations available, it would not be sufficient to beat out the one project and would more than likely have to score higher than 3 out of the 4 on going projects to receive an allocation. The Planning Commission did not believe that this was cost effective for the community. He was not sure if it would be legal to limit the competition to ongoing projects as this was a legal issue. It was the Planning Commission's belief that the compensating factor for the projects that would not be competing was the fact that the City would not give ongoing projects a second year's allocation. If the competition is opened to everyone, the ongoing projects would more than likely receive a second year's allocation, making less allocations available in Fiscal year 2004/05.

No further comments were offered.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council/Agency Commission unanimously (5-0) **Agreed** to extend the meeting time to 12 a.m.*

Council Member Chang stated that she read through the letter from Mr. Fahmy. She said that she needed clarification regarding his comments relating to Section 18.17.186. Mr. Fahmy states that the Planning Officers will hold a pre competition meeting with all persons interested in submitting an application. Another paragraph states "that those that may not receive any allotments this year will have an opportunity to improve their designs and reapply during the next competition." Another paragraph states that "The City Council may, if it chooses, further divide the allotments according to geography, price, development size and similar criteria as deemed necessary to provide for general welfare." She did not know whether these statements apply to the current situation. She recommended that this item be deferred until such time that the City's legal counsel has the opportunity to review this issue.

Mayor Pro Tempore Sellers stated that he did not know if any of the three paragraphs referenced by Mr. Fahmy precludes the Council from proceeding with the Planning Commission's recommendation.

Mayor Kennedy inquired whether this item can be continued in order for staff to look at the legal questions?

Mr. Rowe stated that staff has scheduled a Measure P orientation meeting two weeks from now for perspective applicants to advise them of the decision that the Council has had. He felt that it is a

tight timeline for perspective applicants to put together their major submittal by the October 1 deadline. He recommended that the issue of whether the competition would be opened to new large projects as well as ongoing projects or just limited to ongoing projects return to the City Council. This would allow staff to proceed with the orientation meeting, advising applicants that this is one issue that is unresolved.

City Attorney Leichter noted that this issue was not raised at the Planning Commission but was raised in a letter she received this afternoon at 5:00 p.m. She indicated that she has not had the opportunity to review the letter. She stated that one cannot take sentences at random out of Measure P and that you have to construe the statute as a whole. Oftentimes, you have to go back to the ballot language of Measure P to see what the intent of the initiative was. She said that it was not as simplistic an exercise as looking at individualized sentences. Staff would need to go back and look at the intent of Measure P and determine if the City has the general authority. She recommended that Section 2, paragraph E of the Resolution be amended to state that "The issue of limiting the project to ongoing projects is under discussion and legal review," should the city council wish to proceed this evening.

Council Member Tate stated that he appreciated what the Planning Commission is recommending and trying to accomplish and with what Mr. Schilling is recommending. However, his interpretation of how Measure P was drafted and the intent of Measure P was to open the competition to best projects in every single competition, regardless of whether they were ongoing projects or not. Ongoing projects take a risk that they might not get the allocation because another project comes along with a better project. It was his belief that the competition should be opened to everyone who wants to compete.

Council Member Chang said that as a Planning Commissioner, she helped to implement Measure P. She concurred with Council Member Tate that Measure P competitions be held in order to allocate units to the best project(s). However, she would like to have the legal issues addressed.

Council Member Carr would support the idea that a competition usually brings out the project. He expressed concern that there are projects that have been the best scoring projects and therefore, the best submitted developments for the past 4-7 years. Not allowing the ongoing projects to complete their projects would be detrimental to the community. He expressed concern that there are developments that have been under construction for many years and that the City is not finding ways to complete these projects. He was not sure if the situation would get any better in which the numbers are going to be fewer. What will result is that the city would keep expanding out the time that it will take to complete some of these developments. The negative affects of this on the community are far greater than the potential negative effects of not allowing a new project to compete that might in fact be a better project. He stated that he would hate to limit the competition or not have a competition. However, the City has development, through the process set up that have been ongoing for many years. Yet, they cannot be finished and the City keeps dealing with the impacts of constructions instead.

Mayor Kennedy supported Council Member Carr's position, noting that the Planning Commission has spent much time and energy on this effort. He stated that he would defer to the Planning Commission's recommendation as well.

Council Member Chang said that in reviewing the numbers over the next six years, if the City goes the direction it is heading, the City would have approximately 93 units available for large projects. The following years, would result in 73 units, 48 units, 43 units, 28 units, and 12 units. She felt that the City would be looking at an overall problem for the next six to seven years as allotments would be diminishing. If the law states that the competition can be restricted, the City should go along with the Planning Commission's recommendation. However, if the law does not allow restricting the competition, the City would not be able to restrict the competition.

Mayor Pro Tempore Sellers felt that the City needs to find a way to open up the competition. He agreed that the ongoing projects have scored high for several years. Because of the minimal number of allocations remaining, even if a project was a point or two behind, they would have a difficult time getting additional allotments even if the project is improved. He recommended that the resolution stipulate an open competition but to discourage new projects from competing. Staff to advise perspective applicants that the City is discouraging their application this year, given the small number of allocations remaining. It would be the City's strong preference that it would look at ongoing projects. He recommended that the City Council agendaize preliminary discussion of a measure relative to the residential development control system because this issue has to be addressed sooner rather than later.

Action: *Mayor Pro Tempore Sellers made a motion, seconded by Council Member Tate to **adopt** Resolution No. 5499, amending the second sentence in paragraph E to stipulate that for larger projects, it shall be strongly encouraged that the competition be limited to ongoing projects.*

Mr. Lyle felt that there was a problem with the motion. He said that a new project would not be able to start with a one year's allocation as the majority of new projects need a lot of units that can be spread over two years. If the competition is restricted to one year, it would not be financially feasible to move forward. He felt that the resolution would need to be amended to eliminate the one year limitation for new projects.

Council Member Carr said that if legally possible, the City Council should make this process as simple as it can and limit the competition versus discouraging/restricting to one year competition and trying to make individuals understand how financially infeasible it would be. This would save individuals from a lot of time and effort.

City Attorney Leichter recommended legal review before the City Council takes action which could jeopardize the City's legal position and/or send developers down a path which will not ultimately be one that will be allowed.

Mr. Rowe recommended that paragraph E be eliminated, restricting the competition to a one year's allocation. Staff would relay to perspective Measure P applicants, at the orientation meeting, that new projects would be strongly encouraged to wait to apply for a one year period and await for a full year's allocation.

Actions: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) amended the motion and **Adopted** Resolution No. 5499 Approving the Total Building Allotment and Distribution, and Authorizing a*

Measure P Competition to be Conducted During Fiscal Year 2001-02 for the Balance of the Fiscal Year 2003-04 Building Allotment, deleting Section E.

Mayor Kennedy requested that Consent Item 13 be reconsidered as he has a conflict of interest.

13. APPROVAL OF CONTRACT FOR HOUSING ELEMENT UPDATE CONSULTANT SERVICES

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Agreed** to reconsider Consent Calendar Item 13.*

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Authorized** the City Manager to Execute a Consultant Services Agreement for Contract Consultant Services at a Cost Not to Exceed \$50,000.*

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting at 11:52 p.m. to conclude discussion of the above listed closed session items 4 through 6.

RECONVENE

Mayor Kennedy reconvened the meeting at 12:44 a.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on the above listed closed session items.

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

- Preliminary discussion of a measure relating to the Residential Development Control System.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 12:44 a.m.

MINUTES RECORDED AND PREPARED BY:

Irma Torrez, CMC
City Clerk